

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

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| In re BAYCOL PRODUCTS LITIGATION | : | MDL No. 1431 |
| | : | (MJD/SER) |
| This Document Relates to: | : | |
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| <i>Stephanie O'Neal v. Bayer Corporation</i> | : | Case No. 04-4350 |
| | : | |

**BAYER CORPORATION'S MEMORANDUM
IN SUPPORT OF MOTION TO DISMISS**

On June 22, 2012, the Court granted Stephanie O'Neal and Nicole

Hampton's Motion to Substitute as plaintiffs in this action, and ordered them "to submit either a substitution of counsel or notice to proceed *pro se* within sixty (60) days from the date of this order." June 22, 2012 Order (Ex. A) at 6. The Court warned Ms. O'Neal and Ms. Hampton (collectively, "plaintiffs") that their failure to comply with the Court's Order "will result in this action being dismissed with prejudice." *Id.* August 21, 2012 – sixty (60) days from the Court's Order – has come and gone without plaintiffs having substituted counsel or notifying the Court and Bayer that they intend to proceed *pro se*. This action should be dismissed with prejudice pursuant to Fed. R. Civ. P. 41(b) for failure to comply with the Court's Orders and a failure to prosecute the claims asserted.

"An action may be dismissed pursuant to Rule 41(b) if a plaintiff has failed to comply with any order of the court." *Aziz v. White*, 34 F.3d 587, 589 (8th Cir. 1994), *cert. denied*, 513 U.S. 1090 (1995) (dismissal with prejudice for failing to comply with court's discovery order). Under similar circumstances, where a plaintiff has failed to pursue his or her action and refused to comply with the Court's orders, the Court has

dismissed that plaintiff's claims with prejudice. *See, e.g., Duncan v. City of Brooklyn Park*, 2006 WL 3804332, at *3-*5 (D. Minn. Dec. 26, 2006) (dismissing with prejudice claims where plaintiff failed to prosecute claims and failed to comply with Court's orders); *Tolliver v. City of Minneapolis*, 2005 WL 1719376, at *2-*3 (D. Minn. June 20, 2005) (dismissing action with prejudice for ignoring Court's orders).

The failure to comply with the Court's Order in this case exhibits an unwillingness to proceed in this action and a refusal to adhere to the Court's rules and Orders. Accordingly, this action should be dismissed with prejudice pursuant to Fed. R. Civ. P. 41(b).

For the foregoing reasons, plaintiffs' claims and this action should be dismissed with prejudice.

Dated: August 30, 2012

Respectfully submitted,

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